

1 BILL NO. S-82-12-42

2 SPECIAL ORDINANCE NO. S-1983

3 AN ORDINANCE approving Resolution No.
4 368-82, Spy Run-Elizabeth Storm Sewer Repair,
5 with Earth Construction & Engineering, Inc.,
6 in connection with the Board of Public Works.

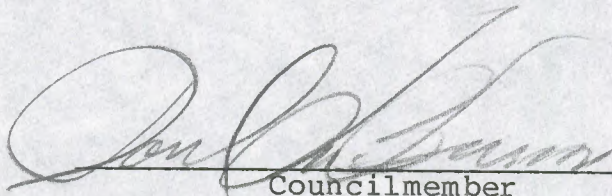
7 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
8 FORT WAYNE, INDIANA:

9 SECTION 1. That a certain Contract dated October 27,
10 1982, between the City of Fort Wayne, Indiana, by and through its
11 Mayor and the Board of Public Works and Earth Construction &
12 Engineering, Inc., for:

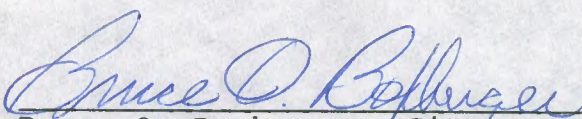
13 the replacement of twelve inch and fifteen
14 inch sewer and catch basins, restoration of
15 asphalt pavement, curbing and sidewalks as
16 outlined in Federal Emergency Management
17 Agency Damage Survey Report No. 044897;

18 under Board of Public Works Resolution No. 368-82, involving a
19 total cost of Twenty-Five Thousand Twenty-Seven and 50/100
20 Dollars (\$25,027.50), all as more particularly set forth in said
21 Resolution and Contract, and which is on file with the Office of
22 the Board of Public Works and is by reference incorporated
23 herein, made a part hereof and is hereby in all things ratified,
24 confirmed and approved. Two copies of said Contract are on file
25 with the Office of the City Clerk and made available for public
26 inspection, according to law.

27 SECTION 2. That this Ordinance shall be in full force
28 and effect from and after its passage and any and all necessary
29 approval by the Mayor.

30 
31 Councilmember

32 APPROVED AS TO FORM
AND LEGALITY

33 
34 Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Burns, seconded by GiaQuinta, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____.M., E.S.T.

DATE: 12-28-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Scruggs, seconded by Stier, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> | <u>TO-WIT:</u> |
|--------------------|-------------|-------------|------------------|---------------|----------------|
| <u>TOTAL VOTES</u> | <u>9</u> | _____ | _____ | _____ | _____ |
| <u>BRADBURY</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>BURNS</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>EISBART</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>GiaQUINTA</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>SCHMIDT</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>SCHOMBURG</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>SCRUGGS</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>STIER</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>TALARICO</u> | <u>✓</u> | _____ | _____ | _____ | _____ |

DATE: 1-11-83

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-19-83 on the 11th day of January, 1983.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Ray A. E. E. E.
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of January, 1983, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 14th day of January, 1983, at the hour of 3 o'clock P.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

6/1

CONTRACT NO. 368-1982

THIS CONTRACT made and entered into in triplicate this 27 day of October, 1982, by and between Earth Construction and Engineering, Inc., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of the following:

Spy Run Avenue and Elizabeth Street Storm Sewer Repair Project Resolution #368-1982, DSR #044897

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11097, Sheet 1-1 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of twenty-five thousand twenty-seven dollars and 50/100, (\$25,027.50). In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal:

| | | |
|----------------------------------|---|----------|
| 1. 12" R.C.P. C1 IV | Twenty-seven dollars and 60/100 | 27.60 |
| 2. 18" R.C.P. C1 IV | Forty-eight dollars and 65/100 | 48.65 |
| 3. Stone Backfill | Eight dollars and no/100 | 8.00 |
| 4. C.F.W. Type I-E Manhole | Nine hundred seventy dollars and no/100 | 970.00 |
| 5. C.F.W. Type III-E Inlets | Eight hundred seventy-five dollars and no/100 | 875.00 |
| 6. 10" Deep Strength Asphalt | Twenty-four dollars and 10/100 | 24.10 |
| 7. 18" Flapgate with Headwall | Three thousand two hundred dollars and no/100 | 3,200.00 |
| 8. C.F.W. Type III Concrete Curb | Fifteen dollars and 25/100 | 15.25 |
| 9. 6" Concrete Sidewalk | Nineteen dollars and 25/100 | 19.25 |

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by Owner to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of State of Indiana and Ordinances of City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bounded by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (NE/1 - NE/3)

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Statutes of Indiana and Ordinances of City of Fort Wayne, attached hereto and made a part hereof. (WR/1).

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 368-1982.
- B. Instructions to Bidders for Contract No. 368-1982.
- C. Contractor's Proposal Dated September 20, 1982.
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11097.
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers adopted July 23, 1980 and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
- F. Special Provisions.
- G. Workmen's Compensation Act Statutes of State of Indiana and Ordinances of City of Fort Wayne.
- H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
- I. Prevailing wage scale.
- J. Performance Bond.
- K. Labor and Material Payment Bond.
- L. Comprehensive Liability Insurance Coverage.
- M. Application for Cut Permit.
- N. Escrow Agreement.
- O. Notice of Award.
- P. Notice to Proceed.
- Q. Change Order.
- R. Notice of Final Acceptance.

ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage. Insurance inforce issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.2.2.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 90 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY: Robert P. Longhead, President

BY: Paul W. Osterman, Secretary

CITY OF FORT WAYNE, INDIANA

BY: Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. Snouffer
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Stephen A. Bailey, Chairman

Roberta Anderson Staten, Member

Betty Collins, Member

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1982.

AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That EARTH CONSTRUCTION & ENGINEERING, INC.

as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the state of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are

held and firmly bound unto Board of Public Works, City of Fort Wayne

as Oblige, hereinafter called Oblige, in the amount of Twenty-five Thousand Twenty-seven and

50/100 Dollars (\$25,027.50),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated October 27, 1982 entered into a contract with Oblige for Spy Run and Elizabeth Street Storm Sewer Repair #368-1982.

which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Principal shall be, and be declared by Oblige to be in default under the contract, the Oblige having performed Oblige's obligations thereunder:

- (1) Surety may promptly remedy the default subject to the provisions of paragraph 3 herein, or;
- (2) Oblige after reasonable notice to Surety may, or Surety upon demand of Oblige may arrange for the performance of Principal's obligation under the contract subject to the provisions of paragraph 3 herein;
- (3) The balance of the contract price, as defined below, shall be credited against the reasonable cost of completing performance of the contract. If completed by the Oblige, and the reasonable cost exceeds the balance of the contract price, the Surety shall pay to the Oblige such excess, but in no event shall the aggregate liability of the Surety exceed the amount of this bond. If the Surety arranges completion or remedies the default, that portion of the balance of the contract price as may be required to complete the contract or remedy the default and to reimburse the Surety for its outlays shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the contract. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Oblige to Principal under the contract and any amendments thereto, less the amounts heretofore properly paid by Oblige under the contract.

Any suit under this bond must be instituted before the expiration of two years from date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Oblige named herein or the heirs, executors, administrators or successors of the Oblige.

Signed and sealed this 27th day of October

19 82

EARTH CONSTRUCTION & ENGINEERING, INC.

BY: [Signature] (SEAL)
Principal

AMERICAN STATES INSURANCE COMPANY

By [Signature] Surety
Fred L. Tagtmeyer, Attorney-in-Fact

AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That...EARTH CONSTRUCTION & ENGINEERING, INC.
as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the State of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are

held and firmly bound unto...Board of Public Works, City of Fort Wayne

as Obligee, hereinafter called Obligee, for the use and benefit of claimants as hereinbelow defined, in the amount of Twenty-Five Thousand Twenty-seven and 50/100 Dollars (\$25,027.50), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated October 27, 1982 entered into a contract with Obligee for Spy Run and Elizabeth Street Storm Sewer Repair #368-1982.

which contract is by reference made a part hereof, and is hereafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant in the name of the Obligee, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon, provided, however, that the Obligee shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
 - (a) Unless claimant shall have given written notice to any two of the following: The Principal, the Obligee, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, Obligee or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - (b) After the expiration of one (1) year following the date on which Principal ceased work on said contract.
 - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this 27th day of October, 1982

EARTH CONSTRUCTION & ENGINEERING, INC.

BY: [Signature] (SEAL)
Principal

AMERICAN STATES INSURANCE COMPANY
Surety

By [Signature]
Fred L. Tagtmeyer Attorney-in-Fact

BILL NO. S-82-12-42

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN
ORDINANCE approving Resolution No. 368-82, Spy Run-Elizabeth
Storm Sewer Repair, with Earth Construction & Engineering, Inc.,
in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE PASS.

SAMUEL J. TALARICO, CHAIRMAN

VICTURE L. SCRUGGS, VICE CHAIRMAN

DONALD J. SCHMIDT

MARK E. GIAQUINTA

PAUL M. BURNS

1-11-83
CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK

TITLE OF ORDINANCE Spy Run-Elizabeth Storm Sewer Repair Contract, Res. 368-82

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Replace 12" and 15" sewer and catch basins, restore asphalt pavement, curb and sidewalk. Contract was awarded to Earth Construction & Engineering, Inc., the low bidder. (Federal Emergency Management Agency Damage Survey Report #044897).

Prior approval obtained on October 11, 1982.

EFFECT OF PASSAGE to receive sewage from collateral drains already constructed.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$25,027.50

ASSIGNED TO COMMITTEE